

PT 00-41

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

FIRST NATIONAL BANK OF)		
SPRINGFIELD TRUSTEE (lessor))		
CHURCH OF THE NAZARENE (lessee))	A.H. File #	99-PT-0019
)		
Applicant)		
)	Docket #	98-57-29
v.)		
)	Parcel Index #	15-29-100-001 (Pt of)
THE DEPARTMENT OF REVENUE)	See attached legal description	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Merrick C. Hayes, attorney at law, appeared on behalf of the Church of the Nazarene.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on September 15, 1999, to determine whether or not part of McLean County Parcel Index No. 15-29-100-001, legally described as being a tract of land consisting of 20.53 acres more or less, being the South 500 feet of the West 1789 feet of the North Half of the Northwest Quarter of Section 29, Township 24 North, Range 3 East of the Third Principal Meridian, McLean County, Illinois, qualified for exemption from real estate taxation for the 1998 assessment year.

Rev. Scott Sherwood, pastor of the Church of the Nazarene (hereinafter referred to as the “Church”), Mr. Wilson Banks a member of the church, and Mr. George Kelley, a beneficiary of First National Bank of Springfield Land Trust No. 7419 dated December 9, 1994, (hereinafter referred to as the “Trust”) were present and testified on behalf of the church.

The issues in this matter include, first whether the trust is the owner of the 20.53 acres of McLean County Parcel Index No. 15-29-100-001 here in issue; secondly, whether the trust is an exempt organization; thirdly, whether the church is a religious organization; and finally whether the 20.53 acres of the parcel here in issue was leased or otherwise used with a view to profit during the 1998 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the trust is the owner of the 20.53 acres here in issue. It is also determined that the trust is not an exempt organization. It is further determined that the church is a religious organization. Finally it is determined that the 20.53 acres of the parcel here in issue was leased with a view to profit during the 1998 assessment year.

I therefore recommend that the 20.53 acres of McLean County Parcel Index No. 15-29-100-001 and the buildings and improvements thereon remain on the tax rolls for the 1998 assessment year and be assessed to the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that the 20.53 acres of the parcel here in issue did not qualify for exemption for the 1998 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On October 28, 1998, the McLean County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the 20.53 acres of the parcel here in issue for the 1998-assessment year. (Dept. Ex. No. 2)

3. On March 18, 1999, the Department advised the church that it was denying the exemption of the 20.53 acre portion of this parcel because said 20.53 acres was not in exempt ownership and was leased by the owner for profit. (Dept. Ex. No. 3)

4. By a letter dated March 30, 1999, the attorney for the church requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on September 15, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. On December 22, 1994, Magna Trust Company as trustee of Trust No. M-609 conveyed by a trustee's deed the 20.53-acre parcel here in issue along with other lands to the First National Bank of Springfield as trustee of Land Trust No. 7419, dated December 9, 1994, (the trust). (Dept. Ex. No. 2B)

7. During 1998 the beneficiaries of the trust were Mr. George Kelley and his four children. (Tr. p. 35, Appl. Ex. No. 8)

8. Mr. Kelley testified that he had an interest in 700 or 800 acres of farmland including the 20.53 acres here in issue during the 1998 assessment year. (Tr. p. 35)

9. On May 1, 1994, Lucille Kelley and George Kelley as agent for all of the beneficiaries of the trust as lessor leased certain land to the church as lessee. The term of the lease began on February 1, 1995. The legal description of the land subject to this lease was the South 500 feet of the West 1789 feet of the North Half of the Northwest Quarter of Section 29, Township 24 North, Range 3 East of the Third Principal Meridian, McLean, County, Illinois, containing 20.53 acres more or less. (Dept. Ex. No. 2E)

10. The church leased this tract from the trust so that it could construct a church building on the Westerly side of the tract near the 500-foot frontage of the tract along Towanda-Barnes Road. Towanda-Barnes Road is a North-South road. The church has constructed a one story building which measures 230 feet by 121 feet, with a parking lot on the Westerly 10 acres of said tract. The building was completed during 1996. That aforesaid building contains a sanctuary,

Sunday school rooms, offices, a Gym/Fellowship Hall, a kitchen and restrooms. The church building was completed and in use on the Westerly portion of this parcel during 1998. (Tr. pp. 18-21, Dept. Ex. Nos. 2C, 2I, and 2J)

11. The term of the lease is 10 years. At the end of the initial 10-year term the lease may be extended for an additional 10 years. The rent for the first 10-year lease term is \$20,000.00 per year payable on or before February 1st of each year. During the renewal 10-year period the rent shall be \$20,000.00 per year increased by the amount of the percentage increase in the United States Consumer Price Index during the initial 10-year rental period. (Dept. Ex. No. 2E)

12. During the lease term, the trust agrees to pay the church \$100.00 per acre per year as rent up to \$1000.00 per year for that portion of the East half of the 20.53-acre parcel that the trust is able to farm. During 1998 the trust was leasing back and farming the East 10 acres of the subject parcel. (Dept. Ex. Nos. 2E & 2I)

13. The lease between the trust and the church provides that the trust shall pay all taxes levied against the unimproved portion of the 20.53-acre parcel here in issue. That lease also provides that the church shall pay to the trust the taxes on any improvements which the church has constructed on the leased premises. (Dept. Ex. No. 2E)

14. The lease provides that at the expiration or sooner termination of the lease any and all buildings and improvements constructed by the church upon the 20.53 acres subject to the lease shall become the property of the trust. (Dept. Ex. No. 2E)

15. The lease also provides that the church may purchase any or all of the 20.53 acres from the trust only during the initial 10-year term of the lease. This purchase option provides that the church may purchase any portion of the property North to South but requires that it purchase the full width of the property East to West. This last provision requires that the church purchase a portion of the property which was being farmed during 1998, and not merely the land which the church was occupying and using during 1998. The purchase price pursuant to this option to purchase is \$20,000.00 per acre. (Dept. Ex. No. 2E)

16. The church is an affiliate of the General Church of the Nazarene. There are 70 churches of that denomination in northwestern Illinois. The office of the General Church of the Nazarene is located in Kansas City, Missouri. (Tr. p. 10, Appl. Ex. No.6)

17. The church is exempt from Federal Income Tax pursuant to Section 501 (c)(3) as evidenced by the group exemption letter issued to the General Board of the Church of the Nazarene in Kansas City, Missouri. (Appl. Ex. No. 6)

18. There were approximately 251 members of the church during 1998. (Tr. pp. 12 & 13)

19. During 1998, worship services were held in the building on the 20.53 acres here in issue on Sunday mornings at 9:30 A.M., Sunday evenings at 6:00 P.M. and on Wednesday evenings at 6:30 P.M. The average attendance at worship services during 1998 was 144. (Tr. p. 15)

20. Prior to the construction of the building on the 20.53 acres here in issue, the church owned a church sanctuary building located at 701 West Washington Street in Bloomington, Illinois. The sanctuary building at 701 West Washington was sold during 1995 and the proceeds of the sale were used in the construction of the building on the 20.53-acre portion of the parcel here in issue. The church borrowed an additional \$400,000.00 from Commerce Bank to finance the construction by Benchmark Building Contractors of the building on the 20.53 acre portion of the parcel here in issue. (Tr. pp. 19 & 20, Dept. Ex. No. 2S)

21. Mr. Banks stated that the church entered into the lease with option to purchase because there was concern that the church did not have sufficient funds to purchase the land and construct a building. (Tr. p. 21)

22. Mr. Banks stated that the church filed the application for exemption in this matter intending to seek the exemption of the church building only located on the 20.53 acre parcel here in issue and not any portion of the aforesaid parcel. (Tr. p. 22)

23. The Application for Exemption in this matter as filed stated that the church was seeking an exemption for 20.53 acres of McLean County Parcel Index No. 15-29-100-001. (Dept. Ex. No. 2)

24. The Affidavit of Use attached to the Application for Exemption stated as follows:

This affidavit is filed in conjunction with an Application for Property Tax Exemption for a 20.53-Acre parcel of land along with all improvements. (Dept. Ex. No. 2D)

25. The Pre-Trial Order and Notice of Hearing in this matter requested that the McLean County Supervisor of Assessments advise the Administrative Law Judge whether McLean County Parcel Index No. 15-29-100-001 (Part of) is a fee parcel or a leasehold parcel. On June 30, 1999, the Supervisor of Assessments wrote a letter to the Administrative Law Judge in which he stated that the aforesaid parcel index number is a fee parcel. (Dept. Ex. Nos. 5 & 2V)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

Concerning parking lots, 35 **ILCS** 200/15-125 exempts certain property from taxation as follows:

Parking areas, not leased or used for profit, when used as a part of

a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt. (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to an exemption.

Based upon the trustee's deed, I conclude that the trust owned the 20.53-acre portion of the parcel here in issue during the entire 1998 assessment year.

Since it was not alleged and also since no evidence or testimony was offered that the trust was an exempt organization, I conclude that it has not been established that the trust is an exempt organization.

I conclude that the church is a religious organization which used the building and improvements it had constructed on the Westerly 10 acres of this parcel for religious purposes during the 1998 assessment year.

The attorney for the church first contends that the church is only seeking an exemption of the church building and improvements on the leased parcel here in issue. He cites as authority for the contention that the church may be granted an exemption while the land is not exempt, the case of City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992) (hereinafter referred to as “City of Chicago”). In the City of Chicago case the Supreme Court determined that the so-called Kraft Building owned by the City of Chicago qualified for exemption while the land on which it was located owned by Chicago Dock-Equitable Venture, a non exempt entity, did not qualify for exemption. The Court, in the City of Chicago case relied on the following provision of 35 ILCS 205/19.6 which exempted certain property as follows:

. . . all public buildings belonging to any . . . city, . . . with the ground on which the buildings are erected.

The Court concluded that this was an ownership exemption which by its language, first exempted public buildings and also might exempt the ground on which the buildings were erected if they were owned by the city. The Court concluded that if public buildings were city owned they could qualify for exemption even though the land was not owned by an exempt entity (Chicago Dock-Equitable Venture). After the adoption of the Property Tax Code in 1994, former paragraph 35 ILCS 205/19.6 became Section 35 ILCS 200/15-60 which reads in part as follows:

Also exempt are:

(b) all public buildings belonging to any . . .city, . . . with the ground on which the buildings are erected.

The public building exemption formerly found in paragraph 205/19.6 which is now found in Section 200/15-60 is the only exemption provision of which I am aware that first exempts buildings and then the land on which the buildings are located.

In the City of Chicago case the Supreme Court noted the distinction between “property”

and “buildings” as follows:

Decatur Sports Foundation is distinguishable from the instant case (City of Chicago) because *Decatur Sports Foundation* concerned the application of section 19.7 the exemption of “property,” as opposed to section 19.6 which specifically exempts improvements, described as “buildings”. (Id. 147 Ill.2d 484,498)

The exemption of property used for religious purposes previously set forth which concerns the portion of the parcel here in issue, like section 19.7 exempts certain “property” as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt, (Emphasis supplied)

The Property Tax Code defines the term “Property “ at 35 **ILCS** 200/1-130 in part as follows:

Property; real property; real estate; land; tract; lot. The land itself with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon,

In view of the forgoing definition of property the Courts have concluded that for property to be exempt from taxation both the improvements as well as the land must qualify for exemption. Decatur Sports Foundation v. Department of Revenue, 156 Ill.App.3d 623 (4th Dist. 1987). *See also* In re Tax Objections of Hutchens, 34 Ill.App.3d 1039 (4th Dist. 1976). Clearly that is not the case here where the land is owned by the nonexempt trust and the church owns the improvements.

It should also be pointed out that the Application for Exemption filed by the church requested an exemption for both the 20.53-acre portion of the parcel in issue and the church building. In addition, the Affidavit of Use also indicated that the church was seeking the exemption of both the 20.53 acres and the church building. Finally in response to a request from the Administrative Law Judge, the McLean County Supervisor of Assessments advised that McLean County Parcel Index No. 15-29-100-001 is a fee parcel. I therefore conclude that the

City of Chicago case is not applicable to the facts here in issue.

The attorney for the church also contends that the lease with option to purchase in this case is simply a method of creative financing. While one of the witnesses for the church stated that the church was concerned about both paying for the land and also the building, no evidence or testimony was offered that the church was unable to obtain the financing necessary to complete the purchase of the land and the construction of the church building.

In both of the cases where the Court held that a party to a lease could be considered the exempt owner for real estate tax purposes, substantial evidence had been presented that the party seeking the exemption could not obtain conventional financing. Cole Hospital v. Champaign County Board of Review, 113 Ill.App.3d 96 (4th Dist. 1983) and Henderson County Retirement Center v. Department of Revenue, 237 Ill.App.3d 522 (4th Dist. 1992). In this case the church not only had the proceeds of the sale of the church building on West Washington Street, it was also able to borrow \$400,000.00 from Commerce Bank. It is therefore clear that the church has failed to establish that it could not obtain conventional financing.

In the case of Victory Christian Church v. Department of Revenue, 264 Ill.App.3d 919 (1st Dist. 1994) the Court determined that one must first look to see if the owner of the real estate is entitled to exemption from property taxes. If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax-exempt status continues. In that case the property was owned by Colonial Bank and Trust Company, as trustee of trust number 872. The property was leased to Victory Christian Church which used it for religious and school purposes. The property was leased to Victory Christian Church for \$8,000.00 per month from January through May 1990 and then \$8,500.00 per month from May through the end of 1990. In addition Victory Church agreed to pay the property taxes on the property. In determining that the property did not qualify for exemption because it was leased with a view to profit, the court stated as follows:

To decide otherwise would allow any private property not entitled to exemption to become tax exempt merely by leasing it to a religious or school organization.

In the case of American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist 1993), American National Bank and Trust Company trustee of trust number 55055 (hereinafter referred to as “American Bank”) on June 14, 1989, leased property which it owned to Zion’s Lighthouse, Inc. (hereinafter referred to as “Zion’s”). American Bank leased the property in question to Zion’s for \$3,200.00 per month and gave Zion’s an option to purchase the property on or before July 30, 1990. Zion’s was responsible under the lease to pay the real estate taxes. The Court determined that the owner of the property leased it for profit and consequently determined that the property was taxable. A portion of the property leased to Zion’s was used as a parking lot. The court also determined that the parking lot was not exempt from taxes because the exemption for parking lots found in 1989 Illinois Revised Statutes, Chapter 120, Paragraph 500.16 required that an exempt organization own the parking lot. That is also the case in 35 **ILCS** 200/15-145 previously set forth.

I have previously concluded that the trust owned the 20.53-acre portion of the parcel here in issue during the entire 1998 assessment year. I have also previously concluded that the trust is not an exempt organization. The lease between the trust and the church provides for annual rent of \$20,000.00. Concerning the 10 acres which the church leases back to the trust to farm, the trust receives net rent of \$900.00 per acre plus the crop. The lease provides that on the expiration or sooner termination of the lease the buildings and improvements which were constructed by the church become the property of the trust. The lease requires that the church pay the real estate taxes on the improvements and building that it constructed. I conclude that the lease between the trust and the church dated May 1, 1994, was a lease with a view to profit. I further conclude that the facts in this case are similar to the facts in Victory Christian Church v. Department of Revenue, 264 Ill.App.3d 919 (1st Dist. 1994), and also American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist 1993). I therefore

conclude that both the land and the improvements located on this parcel are taxable to the owner thereof.

I therefore recommend that part of McLean County Parcel Index No. 15-29-100-001, legally described as being a tract of land consisting of 20.53 acres more or less, being the South 500 feet of the West 1789 feet of the North Half of the Northwest Quarter of Section 29, Township 24 North, Range 3 East of the Third Principal Meridian, McLean County, Illinois, and the buildings and improvements thereon remain on the tax rolls for the 1998 assessment year and be assessed to the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
December 2, 1999